

**LFC Requester:****Theresa Rogers**

**AGENCY BILL ANALYSIS  
2016 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:**

**[LFC@NMLEGIS.GOV](mailto:LFC@NMLEGIS.GOV)**

*and*

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*{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}*

**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

*Check all that apply:*

**Original**      X   **Amendment**          

**Correction**           **Substitute**          

**Date**   2/1/16  

**Bill No:**   HB 284  

**Sponsor:**   Andy Nunez and Rod Montoya  

**Agency Code:**   305  

**Short**      Return of Seized and Forfeited  

**Person Writing**      Jason Yamato  

**Title:**      Property  

**Phone:**   505.222.9163   **Email**   jyamato@nmag.gov  

**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		

(Parenthesis ( ) Indicate Expenditure Decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	<b>FY16</b>	<b>FY17</b>	<b>FY18</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

**BILL SUMMARY**

This analysis is neither a formal Attorney General's Opinion nor an Attorney General's Advisory Letter. This is a staff analysis in response to an agency's, committee's, or legislator's request.

**Synopsis:**

House Bill 284 proposes to amend Section 31-27-3, NMSA 1978 by redacting subsections A and B from the definition section. Specifically the terms "abandoned property" and "actual knowledge" are to be removed from the section.

HB 284 would also amend Section 31-27-4.1, NMSA 1978 Section B by allowing 90 days as opposed to 60 days to claim an interest in seized property by way of a motion requesting a writ of replevin. The phrase "that was seized without a court order" would be added to Section E(1) of the statute. HB 284 further adds to Section E(3) that "the defendant made a prima facie showing that the property was not used in the furtherance of a crime." Section F is amended to require that an accounting relating to the release of funds for legal representation be held in camera. If the court finds in the State's favor in both parts of the bifurcated proceeding 1) The accounting shall be disclosed; 2) Arguments shall follow as to what funds should be forfeited and what funds should be paid to counsel; and 3) The court will issue an order as to the allocation of the seized funds.

HB 284 seeks to amend Section 31-27-6(K) by limiting the period of time to challenge the constitutionality of the forfeiture to 30 days. In Section N, the proposal seeks to redact subsections 2 and 3 dealing with hardship to the defendant and to the defendant's family if seizure is effectuated.

Section 31-27-7(B), NMSA 1978 would be amended to govern the allocation of seized property which would occur in the following order: 1) To pay "expenses related to the investigation, seizure, storage, protection, and transfer of the property," 2) To pay "expenses incurred by the state treasurer's office" related to disposal of the property, 3) "To reimburse law enforcement agencies," and 4) Any property left shall be deposited to the general fund. HB 284 adds the requirement that any funds deposited in the general fund of the governing body of the seizing agency "shall be used for drug abuse prevention and education programs and treatment services, for other substance abuse or demand reduction initiatives or for the enforcement of drug related laws." Section D relaxes the standard for a secured party from actual knowledge to whether the secured party "knew or should have known" of the criminal activity.

Section 31-27-7.1(c) again relaxes the standard, this time for innocent owners of seized

property, from actual knowledge to whether the innocent owner “knew or should have known” of the criminal activity. Section D requires the state to show that, upon proof of an innocent owner, the state must show the innocent owner “knew or should have known” of the criminal activity. Subsection F again relaxes the standard to “knew or should have known.”

The phrase “SELLING OR RETAINING SEIZED PROPERTY” would be redacted from Section 31-27-8, NMSA 1978. Section D prohibiting law enforcement from retaining forfeited property would also be redacted.

Subsection 5 and 6 would be added to Section 31-27-9, NMSA 1978. Subsection 5 requires “the costs incurred by the agency for storage, maintenance and transportation of seized property” to be included in an agency’s annual report of seized property. Subsection 6 requires that “any costs incurred by the agency to prepare its report” be included in the annual report.

HB 284 lowers the threshold for transferring seized property to a federal agency from \$50,000 to \$25,000. Former subsection B prohibiting law enforcement from transferring “property to the federal government if the transfer would circumvent the protections of the Forfeiture Act” would be redacted. A new subsection D allowing seized assets, to include “firearms, ammunition, explosives, property associated with child pornography or other property that directly relates to public safety concerns,” to be transferred to the federal government.

## **FISCAL IMPLICATIONS**

See other substantive issues.

## **SIGNIFICANT ISSUES**

N/A

## **PERFORMANCE IMPLICATIONS**

HB 284 would allow agents from the AGO to transfer seized property associated with child pornography to the federal government. The specific investigation leading to seized property would be reimbursed from that property. However, excess funds after reimbursement would be deposited in the general fund.

## **ADMINISTRATIVE IMPLICATIONS**

N/A

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

N/A

## **TECHNICAL ISSUES**

N/A

## **OTHER SUBSTANTIVE ISSUES**

The primary issue with HB 284 is the financial impact on law enforcement agencies that rely on forfeited funds to supplement their budget. HB 284 requires that any funds deposited to the general fund of the LEA “be used for drug abuse prevention and education programs and treatment services, for other substance abuse or demand reduction initiatives or for the enforcement of drug related laws.” This limitation on the acceptable use of seized property as well as the decreased allocation of seized property to the seizing entity could have a detrimental effect on law enforcement, due to an effective cut in funding.

## **ALTERNATIVES**

N/A

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status quo

## **AMENDMENTS**

N/A